

# COMMUNITY ASSOCIATION lawreporter

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CAI's Newsletter on the Emerging Law of Condominium and Homeowner Associations and Cooperatives

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## Assessments Based on Invalid Amendments Are Improper

*Sadler v. The Oak Run Property Owners Association*, No. 97-MR-96, Ill. App. Ct. November 7, 2000

**Association Operations/Assessments:** Amendments that were improperly adopted are invalid, and assessments based on invalid amendments are improper. Additionally, the Illinois statute of limitations did not apply to an owner's challenge of the amendments' validity.

In 1990, Monica Sadler purchased two homes in the Forest Ridge subdivision, located in Knox County, Illinois. Sadler owned one home with her husband and owned one home with her mother. The Forest Ridge subdivision is subject to the Declaration of Restrictive Covenants for the Forest Ridge Subdivision ("declaration"), recorded by American Central Corporation ("developer") in 1971. Developer also recorded seven separate and distinct additional declarations, subjecting seven additional subdivisions to these declarations. The eight distinct subdivisions make up the development commonly known as Oak Run and are administered by the Oak Run Property Owners Association ("association").

In accordance with the declaration, the association was empowered to collect annual maintenance assessments from lot owners (\$38 per lot/\$15 for

each additional lot owned by the same person). Any changes or modifications made to the amount and basis of as-

essments would require the approval of at least two-thirds of the Forest Ridge residents at a meeting duly called for such purposes. Moreover, the declaration required that the annual assessment be evenly distributed among each original lot within the Forest Ridge subdivision.

In 1977 and in 1981, the association attempted to amend all of the Oak Run declarations, including the Forest Ridge declaration, by a meeting and vote of the association as a whole.

The 1977 amendment increased the amount of annual assessments (\$50 per lot/\$20 for each additional lot owned by the same person) and provided for an increase to annual assessments each year based on the consumer price index formula. The

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Any changes or modifications made to the amount and basis of assessments would require the approval of at least two-thirds of the Forest Ridge residents.



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1981 amendment changed the distribution of assessments and provided for annual assessments to be paid by the number of users of each lot. According to the 1981 amendment, "a lot was deemed to have a single user if the owner is: 1) an individual, 2) a husband and wife, or 3) a parent or parents and children living in the same home with the owner." In every other case, a lot was deemed to have one user for each person who was an owner. Each amendment was passed by pooling the votes of residents from all of the subdivisions within Oak Run.

Sadler filed a complaint against the association, the association's attorney, Michael Massie, and the association's board of directors. The crux of Sadler's claim against the association is that the 1977 and 1981 amendments were invalid as to the Forest Ridge subdivision because they were passed by a vote of the association as a whole and not just the owners of lots within Forest Ridge, as specifically set forth in the declaration. Therefore, Sadler asserted, the amendments were void and all assessments made by the association pursuant to the amendments were improper.

The trial court summarily concluded that Sadler's claims were barred by the Illinois statute of limitations because any challenges to the validity of the 1977 and 1981 amendments could have been asserted when the amendments were passed. Furthermore, the trial court concluded that the declaration could be amended without requiring a vote of the Forest Ridge members sepa-

rate from members of other subdivisions within Oak Run.

Sadler appealed the trial court's reliance on the statute of limitations in dismissing her claim to the validity of the assessments and the 1977 and

1981 amendments. She argued that the "statutes of limitations are procedural, affecting only the remedy available and not the substantive rights of the parties." Moreover, Sadler argued that dismissing these challenges based on the statutes of limitations essentially would render void acts valid.

The appeals court agreed with Sadler regarding the validity of the amendments and the applicability of the

statute of limitations. It stated, "if the amendments are in fact void, as Sadler contends, each yearly assessment gave rise to a new cause of action. Neither the passage of time nor the lack of prior objection can ratify void amendments or give them validity." The court went on to determine that the association improperly amended the declaration when it consolidated the votes of owners from all of the subdivisions to effectuate the 1977 and 1981 amendments. It found that the declaration could only be amended by a separate meeting and vote of the owners subject to the declaration—i.e., the owners of property within the Forest Ridge subdivision. Because the association failed to follow that amendment procedure and obtain the requisite vote from the Forest Ridge residents, the court found that the 1977 and 1981 amendments were invalid and violated the declaration.

*The appeals court agreed with Sadler regarding the validity of the amendments and the applicability of the statute of limitations.*

The court found that the 1981 amendment also violated the declaration's provision that annual assessments are to be distributed evenly against each lot. The 1981 amendment altered the methodology of assessment distribution by allowing the association to levy higher assessments against lots owned by more than one person, excluding married couples and nuclear families. Sadler contended that the association's practice of charging her a higher assessment for the property that she co-owns with her mother violates that provision.

Having determined that the amendments were invalid, the court reiterated that each assessment levied was a separate breach of the declaration and a separate, distinct cause of action to which the statute of limitations does apply. It concluded that since the declaration is a contract between the parties, the 10-year statute of limitations applicable to written contracts applied to each improper assessment levied by the association. Therefore, Sadler's claims of invalidly levied assessments, and all assessments levied by the association within the 10-year period prior to the filing of the action by Sadler, are not barred. The court stated that the 10-year statute of limitations applied even if the court determined that the 1977 and 1981 amendments were *ultra vires*.

The appellate court then addressed the trial court's dismissal of Sadler's claims against the board. Sadler argued that (1) the board breached its fiduciary duty to her and the other homeowners within Forest Ridge by enforcing invalid amendments and assessments, and (2) the board's actions are not protected by the Illinois business judgment rule because the business judgment rule only protects actions that are *intra vires*, not the board's *ultra vires* acts. The association maintained that under Illinois law, the board of directors of a nonprofit corporation is protected by the business

judgment rule. The association contended that when the board of directors of a homeowner association properly exercises its business judgment in interpreting its own declaration, the court should not find the board's interpretation a breach of fiduciary duty.

First, the court addressed the issue of whether the business judgment rule protects *ultra vires* acts. It concluded that the business judgment rule does protect the board's actions if such actions were determined to be *ultra vires*. Second, it addressed Sadler's contention that the board should not be protected by the business judgment rule because it was not adequately informed to make sound business judgments regarding the enforcement of the 1977 and 1981 amendments. Sadler argued that the business judgment rule is a presumption that corporate decisions are made by directors on an informed basis, in good faith, and with the honest belief that the course taken was in the best interests of the corporation.

The court determined that Sadler was entitled to present evidence supporting her allegations and to rebut the presumption of the business judgment rule. It stated that "Illinois follows the 'bursting bubble theory,' which provides that once evidence is established which contradicts the presumption, the presumption vanishes." Therefore, the appellate court reversed the trial court's dismissal of Sadler's claim against the board to the extent that Sadler be given an opportunity to present evidence at the trial level which contradicts the presumption of the business judgment rule. ♦

*Editor's Observation: Believe it or not, I briefed and argued this appeal. It is an interesting and somewhat complex matter and one in which the rights of homeowners needed addressing and protecting. Association counsel everywhere should be willing to assert the individual's right as well as the association's. Many of you already do so.*

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